



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0769; FRL- 10576-01-R4]

#### Air Plan Approval; NC; Transportation Conformity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (DEQ), Division of Air Quality (DAQ) on September 24, 2021. The SIP revisions replace previously approved memoranda of agreement (MOAs) with thirteen updated MOAs outlining transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation, and enforceability of certain transportation-related control and mitigation measures. EPA is proposing to determine that North Carolina's September 24, 2021, SIP revisions are consistent with the applicable provisions of the Clean Air Act (CAA or Act).

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0769 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider

comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222. Ms. Sheckler can also be reached via electronic mail at [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### ***A. What Is Transportation Conformity?***

Transportation conformity is required under section 176(c) of the CAA and is a process that ensures federally-supported transportation activities are consistent with (“conform to”) the purposes of the SIP. Examples of transportation activities include federally-supported highway projects, transit projects, transportation plans, and transportation improvement projects (TIPs). Transportation conformity applies to areas that are designated nonattainment for transportation-related national ambient air quality standards (NAAQS) (i.e., ozone, particulate matter (e.g., PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>)) and to certain areas that have been redesignated to attainment of a transportation-related NAAQS.<sup>1</sup>

Pursuant to CAA section 176(c), conformity means conformity to a SIP’s purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that no federal or federally-supported activity

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<sup>1</sup> In general, transportation conformity does not apply for areas that have completed the entirety of the required maintenance period (i.e., typically 20 years after redesignation).

under section 176(c)(1) will: (1) cause or contribute to any new violation of any NAAQS in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the CAA apply to all departments, agencies, and instrumentalities of the federal government. Transportation conformity refers only to the conformity of transportation plans, programs, and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. chapter 53). Pursuant to section 176(c) of the CAA, EPA issues criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP. One of the requirements is that each state submit a revision to its SIP to include conformity criteria and procedures.

**B. *Why Are States Required to Submit a Transportation Conformity SIP?***

EPA promulgated the first federal transportation conformity criteria and procedures (“Conformity Rule”) on November 24, 1993 (*see* 58 FR 62188), codified at 40 CFR part 51, subpart T and 40 CFR part 93. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs, frequently referred to as “conformity SIPs.” Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim into the SIP. Since then, the rule has been revised on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), April 10, 2000 (65 FR 18911), August 6, 2002 (67 FR 50808), and January 24, 2008 (73 FR 4438).

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA transportation conformity provisions by streamlining the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that

address the other sections of the conformity rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law.

A transportation conformity SIP can be adopted as a state rule, a memorandum of understanding (MOU), or a memorandum of agreement (MOA). The MOA/MOU must establish the roles and procedures for transportation conformity and include the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including EPA and the U.S. Department of Transportation (USDOT) which consists of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). States may use an MOU or MOA as long as it meets the following requirements: “(1) it is fully enforceable under state law against all parties involved in interagency consultation and in approving, adopting and implementing transportation projects, TIPs, or transportation plans, (2) the state submits it to EPA for inclusion into the SIP, and (3) it has been signed by all agencies covered by the conformity rule...”<sup>2</sup>

### ***C. How Does Transportation Conformity Work?***

The transportation conformity rule applies to certain NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organization (MPO), the state department of transportation (DOT) (in absence of an MPO), state and local air quality agencies, EPA, and the USDOT are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as a TIP, transportation plans, and transportation projects. The projected emissions that will result from implementation of the transportation plans and programs are calculated and compared to the motor vehicle emissions budget (MVEB) established in the SIP. The calculated emissions must be equal to or smaller than the federally approved MVEB for the USDOT to make a positive conformity determination with respect to the SIP.

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<sup>2</sup> See “Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)” U.S. Environmental Protection Agency, Office of Transportation and Air Quality, EPA-420-B-09-001 (January 2009). Available at: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W5B.PDF?Dockkey=P1002W5B.PDF>.

Pursuant to federal regulations, when an area is designated nonattainment for a transportation-related NAAQS, the state is required to submit a transportation conformity SIP within one year of the effective date of the nonattainment area designations. *See* 40 CFR 51.390(c). Previously, North Carolina established, and EPA subsequently approved, a transportation conformity SIP to address areas that were designated nonattainment or previously designated nonattainment for the CO and 1-hour ozone NAAQS. *See* 67 FR 32549 (December 27, 2002) for EPA’s rulemaking approving North Carolina’s transportation conformity SIP. North Carolina subsequently submitted a SIP revision on July 12, 2013, to update and replace North Carolina’s previously approved transportation conformity SIP. EPA approved this revision on December 26, 2013. *See* 78 FR 78266.

***D. The South Coast II Decision***

On February 16, 2018, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *South Coast Air Quality Mgmt. Dist. v. EPA* (“*South Coast II*,” 882 F.3d 1138) that affected the process for making transportation conformity decisions in areas that were either nonattainment or maintenance for the 1997 ozone NAAQS. The case revolved around a challenge to EPA’s final rule establishing implementation requirements for the 2008 ozone NAAQS and revoking the 1997 8-hour ozone NAAQS, known as the 2008 ozone NAAQS SIP Requirements Rule. *See* 80 FR 12264 (March 6, 2015). As a result of this rule, areas that were nonattainment or maintenance for the 1997 ozone NAAQS were no longer required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS. In *South Coast II*, multiple environmental interest groups challenged EPA’s 2008 ozone NAAQS SIP Requirements Rule. The Court vacated portions of EPA’s 2008 ozone NAAQS SIP Requirements Rule, but upheld EPA’s revocation of the 1997 ozone NAAQS.

The Court decision referred to the 1997 ozone NAAQS nonattainment or maintenance areas that were designated attainment for the 2008 ozone NAAQS as “orphan areas.” The decision stated that transportation conformity still applies for the revoked 1997 ozone NAAQS in these orphan areas. For areas that were nonattainment for the 1997 ozone NAAQS at the time it

was revoked, the court stated that transportation conformity applies as an anti-backsliding measure. *See* South Coast II, 882 F.3d at 1149. For areas that were maintenance for the 1997 ozone NAAQS at the time it was revoked, the court stated that transportation conformity applies based on the court's interpretation of CAA section 176(c)(5)(B). *See id.* at 1155.

Based on the Agency's review of the court decision, EPA has concluded that the decision does not affect transportation conformity requirements for areas originally designated nonattainment for the more stringent 2008 ozone NAAQS (*see* 77 FR 30160, May 21, 2012), or areas designated nonattainment for the more stringent 2015 ozone NAAQS (*see* 83 FR 25776, June 4, 2018). However, as a result of this court decision, the previous 1997 8-hour ozone NAAQS nonattainment areas are required to implement transportation conformity. These areas are as follows for North Carolina: (1) the bi-state Charlotte-Gastonia-Rock Hill, NC-SC; (2) Greensboro-Winston Salem-High Point, NC; (3) Great Smoky National Park (North Carolina portion); (4) Hickory-Morganton-Lenoir, NC; (5) Raleigh-Durham-Chapel Hill, NC; and (6) Rocky Mount, NC.

## **II. EPA Analysis of North Carolina's Submittals**

CAA Section 176(c)(4)(E) and 40 CFR section 51.390(b) require states to develop conformity SIPs that address three specific provisions of federal regulations. First, EPA's transportation conformity rule requires states to develop their own processes and procedures which meet the criteria in 40 CFR 93.105 for interagency consultation and resolution of conflicts among the federal, state, and local agencies. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and the USDOT in consultation with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the USDOT. Second, 40 CFR 93.122(a)(4)(ii) states that conformity SIPs must require written commitments to control measures to be obtained prior to a conformity

determination if those measures are not included in an MPO’s transportation plan and TIP. This rule also requires that such commitments are fulfilled. Finally, 40 CFR 93.125(c) states that conformity SIPs must require that written commitments to mitigation measures must be obtained prior to a project-level conformity determination, and that the project sponsors comply with these commitments.

On July 12, 2013, the State of North Carolina, through DAQ, submitted its “Conformity SIP” for the applicable transportation-related NAAQS. Specifically, North Carolina requested EPA approval of its Conformity SIP which included MOAs signed by the federal and state transportation and air quality partners, and all of the MPOs in the state subject to transportation conformity requirements. EPA approved these MOAs into the North Carolina SIP on December 26, 2013. *See* 78 FR 78266.

North Carolina’s September 24, 2021, conformity SIP revisions add new interagency partners and MPOs, establish new procedures for interagency consultation, dispute resolution, public participation and enforceability of certain transportation-related control measures and mitigation measures, and supersede the MOAs incorporated into the SIP on December 26, 2013. For a list of MPOs for which North Carolina has established MOAs in the September 24, 2021, submission, see Table 1, below. Table 1 also includes a list of the areas and/or counties which are covered under the updated MOAs.

**Table 1. MOA Administrators and Covered Areas**

<b>MOA Administrator</b>	<b>Covered Areas</b>
Burlington-Graham MPO	Alamance County and portions of Guilford and Orange Counties
Cabarrus-Rowan MPO	Cabarrus and Rowan Counties
Charlotte Regional Transportation Planning Organization	Charlotte Urbanized Area which includes Charlotte and the remainder of Mecklenburg County plus that area beyond the existing urbanized area boundary of Iredell, Mecklenburg, and Union Counties that is expected to become urban within a twenty-year planning period
Durham-Chapel Hill-Carrboro MPO	Durham County, the portion of Orange County that contains the towns of Chapel Hill, Carrboro, and Hillsborough, and Northeast Chatham County

<b>MOA Administrator</b>	<b>Covered Areas</b>
Gaston-Cleveland-Lincoln MPO	Gaston, Cleveland, and Lincoln Counties
Greater Hickory MPO	Alexander, Burke, Caldwell, and Catawba Counties
Greensboro Urban Area MPO	City of Greensboro, the majority of unincorporated Guilford County, and the towns of Oak Ridge, Pleasant Garden, Sedalia, Stokesdale, and Summerfield
High Point Urban Area MPO	Archdale, Denton, High Point, Jamestown, Lexington, Thomasville, Trinity, Wallburg, and portions of Davidson County, Forsyth County and Randolph County
North Carolina Capital Area MPO	Wake County and parts of Franklin, Granville, Harnett, and Johnston Counties
Rocky Mount Urban Area MPO	City of Rocky Mount, Towns of Nashville and Sharpsburg, and portions of Edgecombe and Nash Counties
Winston-Salem-Forsyth Union Area MPO	Portions of Forsyth, Davidson, Davie, and Stokes Counties
Rural (counties not covered by MPO, administered by North Carolina DOT)	Person County
Great Smoky Mountains National Park (administered by NPS)	Portions of Haywood and Swain Counties

Table 2, below, identifies the applicable NAAQS for which each planning agency is required to implement transportation conformity, and therefore, establish interagency consultation procedures. As stated above, the MOAs are the documents which establish each area's interagency consultation procedures.

**Table 2. MOA Administrators and the Applicable NAAQS for Transportation Conformity**

<b>MOA Administrator</b>	<b>Applicable NAAQS</b>
Burlington-Graham MPO	1997 8-hour ozone and 1997 annual PM <sub>2.5</sub> NAAQS
Cabarrus-Rowan MPO	1997 8-hour ozone, 2008 8-hour ozone, and 2015 8-hour ozone NAAQS
Charlotte Regional Transportation Planning Organization	1971 CO, 1997 8-hour ozone, and 2008 8-hour ozone NAAQS
Durham-Chapel Hill-Carrboro MPO	1971 CO and 1997 8-hour ozone NAAQS
Gaston-Cleveland-Lincoln MPO	1997 8-hour ozone and 2008 8-hour ozone NAAQS
Greater Hickory MPO	1997 annual PM <sub>2.5</sub> NAAQS



<b>MOA Administrator</b>	<b>Applicable NAAQS</b>
Greensboro Urban Area MPO	1997 annual PM <sub>2.5</sub> NAAQS
High Point Urban Area MPO	1971 CO and 1997 annual PM <sub>2.5</sub> NAAQS
North Carolina Capital Area MPO	1971 CO and 1997 8-hour ozone NAAQS
Rocky Mount Urban Area MPO	1997 8-hour ozone NAAQS
Winston-Salem-Forsyth Urban Area MPO	1971 CO and 1997 annual PM <sub>2.5</sub> NAAQS
Rural (counties not covered by MPO, administered by North Carolina DOT) <sup>3</sup>	1997 8-hour ozone NAAQS
Great Smoky Mountains National Park (administered by NPS)	1997 8-hour ozone NAAQS

Aside from some minor language edits and clarifications, each updated MOA makes changes to address federal transportation conformity requirements. Details on EPA's analysis of each updated MOA and its reasoning for proposing to approve them is presented in the sections below.

#### ***A. Bi-State Charlotte Area***

There are three MPOs within the North Carolina portion of the bi-state Charlotte Area.

These MPOs are:

- Cabarrus-Rowan Metropolitan Planning Organization (CRMPO);
- Charlotte Regional Transportation Planning Organization (CRTPO); and
- Gaston-Cleveland-Lincoln Metropolitan Planning Organization (GCLMPO).

Several counties (or portions of counties) in the bi-state Charlotte Area comprise the maintenance area for the CO NAAQS, as well as the maintenance areas for the 2008 8-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. Based on the 1997 and 2008 8-hour ozone NAAQS, Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, and Union

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<sup>3</sup> Person County is the only county subject to transportation conformity requirements per the 1997 8-hour ozone NAAQS that does not have an MPO responsible for it.

Counties in North Carolina, and a portion of York County in South Carolina,<sup>4</sup> are required to implement transportation conformity requirements.<sup>5</sup> DAQ worked with CRMPO, CRTPO, GLMPO, NC DOT, and the other applicable transportation and air quality partners for the bi-state Charlotte Area to develop and execute updated MOAs to address the consultation and other applicable transportation conformity requirements for the Area. These MOAs are provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions, through the MOAs, update the MOA definitions, party duties section, conformity analysis results and reporting section, and the modifications of agreement section. The MOAs for MPOs in the bi-state Charlotte Area were primarily updated to make minor non-substantive changes such as minor language edits, renumbering changes throughout the MOAs, one change in a timing provision, and the removal of one section. Additionally, the September 24, 2021, SIP revisions include several other changes such as definition changes, and a few new clauses.

The bulk of the changes in the September 24, 2021, SIP revisions concern minor language edits, clarifications, the correction of a typographical error, and the removal of an unnecessary section. For example, one language edit changes the word "under" to "pursuant to." An example of clarifying edits made in the MOAs for the bi-state Charlotte Area was to update the names and abbreviations of the involved state and local agencies to their current names throughout the MOAs. Additionally, the MOAs for the bi-state Charlotte Area included updates to the format for statutes and regulations, for example changing "North Carolina Administrative Code (hereinafter, 'N.C.A.C.'), Subchapter 2D" to "North Carolina Administrative Code (hereinafter, 'NCAC'), Subchapter 2D." One other edit made in all the MOAs is to clarify the

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<sup>4</sup> Separate to North Carolina, the state of South Carolina has established conformity procedures for York County, which makes up the South Carolina portion of the Charlotte bi-state Area, in its individual conformity SIP. EPA approved South Carolina's Conformity SIP on July 28, 2009. *See* 74 FR 37168.

<sup>5</sup> On December 16, 2015, EPA sent a letter to CRTPO informing it that its transportation conformity obligations in Mecklenburg County for the CO NAAQS ceased to apply after September 18, 2015, because the 20-year maintenance period had been reached and North Carolina did not extend the maintenance period beyond it. A copy of this letter is provided in the docket for this proposed rulemaking.

timing provision for the Interagency Consultation Conformity Determination Meeting, to be more explicit that the meeting must take place prior to a conformity determination being made. Previously, the description of the meeting timing was unclear, so the edits require the meeting to take place at least nine months before a conformity determination is needed. The updates for the MOAs for the bi-state Charlotte Area also fix a typographical error in clause 6.3.1.5 when referencing a specific regulation provision. Lastly, the MOAs for the bi-state Charlotte Area remove the “Termination of Agreement” section. Further minor, non-substantive changes include adding the term “MOA” to refer to the Memorandum of Agreement throughout the document, basic word preference changes, grammatical changes, and necessary renumbering of sections to incorporate the addition or removal of provisions, which are further discussed below.

The MOAs also include several changes to the definitions sections of the MOAs, including the modification of two definitions and the addition of another. The MOAs all replaced the definition of “Long Range Transportation Plan (LRTP)” with “Metropolitan Transportation Plan (MTP).”<sup>6</sup> The definition for MTP in the new MOAs is, “...the official multimodal transportation plan addressing no less than a 20-year planning horizon that the MPO develops, adopts, and updates through the metropolitan transportation process.” The definition for MTP is nearly identical to the definition for LRTP, with the one difference being the description as to how the plan is developed. The LRTP definition stated that it was developed through the “statewide transportation planning process” while the MTP definition states that “the MPO develops, adopts, and updates through the metropolitan transportation planning process.” The MTP definition comes from 23 CFR part 450, titled “Planning Assistance and Standards.” 40 CFR part 93 states that transportation conformity determinations are required for the adoption, acceptance, approval, or support of transportation plans, transportation improvement programs (TIPs), and their amendments, developed pursuant to 23 CFR part 50. *See* 40 CFR

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<sup>6</sup> Long Range Transportation Plan was defined as “...the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.”

93.102. Since transportation plans are developed pursuant to the requirements outlined in 23 CFR part 450, EPA preliminarily agrees with this change. North Carolina replaces all references to the LRTP with MTP throughout the MOAs for the bi-state Charlotte Area. Additionally, the MOA updates modify the definition of “Statewide Transportation Improvement Program (STIP).”<sup>7, 8</sup> The updated definition of STIP is identical to the definition in 23 CFR part 450. Finally, North Carolina also adds a definition for “Transportation Improvement Program (TIP)” in the MOAs for the bi-state Charlotte Area. Transportation conformity requires that federally-supported transportation activities, such as TIPs, are consistent with the purpose of the SIP. As transportation conformity includes TIPs, EPA preliminarily finds the addition of this definition to each MOA acceptable.

North Carolina also added several new clauses in each MOA for the bi-state Charlotte Area. First, DAQ adds clause 2.1.6 in the “MPO Duties” sub-section, under the “Duties of the Parties” section, requiring that the:

MPO, NCDOT, or its designee, shall conduct project-level conformity analysis for MPO-sponsored projects as part of the NEPA process for FHWA/FTA projects located in the MPO boundary. The MPO does not have to make project-level conformity determinations.

40 CFR part 93.105 and 40 CFR part 93.122(a) require the MPOs conduct an analysis for all FHWA/FTA projects proposed in transportation plans, TIPs, or other regionally significant projects. This clause was added to meet this requirement. DAQ also adds a clause and sub-clauses to the “Modifications of Agreement” section. The clause and its corresponding sub-clauses allow NC DEQ to make administrative amendments as necessary to preserve the accuracy and integrity of the MOAs. The sub-clauses define what constitutes an administrative amendment. These modifications make this section more stringent by limiting acceptable

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<sup>7</sup> The previous definition in the MOA defined STIP as, “...a staged, multi-year, statewide, intermodal program of transportation projects, which consistent with the statewide transportation plan and planning processes.”

<sup>8</sup> The MOA has updated the definition of STIP to, “...a statewide, prioritized listing/program of transportation projects that is consistent with the long-range statewide transportation plan, TIPs, and required for projects to be eligible for funding pursuant to Title 23 U.S.C. and Title 49 U.S.C.chapter 53.”

amendments to the following: typographical errors, legal citations to accurately account for any reorganization of laws or regulations, and public information changes, such as the renaming of an organization. Further, EPA preliminarily finds these modifications acceptable as any amendments will still have to go through the SIP process to modify the transportation conformity SIP.

DAQ has also modified several clauses in each MOA. A clause DAQ modifies in each MOA is 2.1.13 in the “MPO Duties” sub-section under the “Duties of the Parties” section. This clause now requires that the applicable MPO or MPO designee submit a request to NC DEQ or its designee for written emissions modeling results required for conformity determinations instead of for emission factors. Further, the change also requires the MPO, or its designee, to provide vehicle speed, vehicle miles travelled, and other input data necessary to generate emissions modeling results. Emissions modeling is a more comprehensive way to characterize emissions resulting from transportation conformity projects than simply using emissions factors because it accounts for more variables, such as meteorology. 40 CFR 93.105(c) requires that the agencies subject to an MOA evaluate and choose a model for regional emissions analyses, and 40 CFR 93.122 outlines how these models should be designed. Other provisions referring to emissions factors previously in the MOAs are revised to refer to emissions modeling results instead. For example, subsection 7.1.2 in each MOA specifies that the conformity analysis reports must include the mobile model inputs and outputs used to develop the emissions modeling results. One last clause that is modified in each MOA is 2.2.11, which is in the “NCDEQ Duties” sub-section, also under the “Duties of the Parties” section. This clause requires NC DEQ to consult and review project narratives to determine if a conformity project is an air quality concern pursuant to 40 CFR part 93. Previously, it only required a review of project narratives to determine if the conformity project had any particulate matter air quality concerns. The modification to the clause makes it more stringent because it is now not limited to particulate matter air quality concerns.

EPA has reviewed the procedures and updates provided in the MOAs and has preliminarily determined that they are consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93. Therefore, EPA is proposing to approve the inclusion of the updated MOAs for the CRMPO, CRTPO, and GLMPO, relating to the bi-state Charlotte Area into the North Carolina SIP.

***B. Great Smoky Mountain National Park Area***

Portions of Haywood and Swain Counties comprise the Great Smoky National Park maintenance area for the 1997 8-hour ozone NAAQS. As indicated above, the Great Smoky Mountain National Park Area is required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS as a maintenance area. As such, DAQ worked with the National Park Service, NC DOT, and the other applicable transportation and air quality partners for the Great Smoky Mountain National Park Area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity requirements for the area. This MOA is provided in the docket for this proposed rulemaking.

The bulk of the changes in the September 24, 2021, SIP revisions concern minor language edits, clarifications, and a correction of a typographical error. For example, one language edit changes the word “under” to “pursuant to.” An example of clarifying edits to the Great Smoky Mountains MOA was to update the names and abbreviations of the involved state and local agencies to their current names throughout the MOA. Additionally, the format for statutes and regulations in the MOA have been revised, for example changing “49 U.S.C., 40 CFR 93.101” to “49 USC, 40 CFR 93.101” and changing, “40 CFR 93.126, .127, and .128” to “40 CFR 93.126, 93.127, and 93.128.” The MOA was also updated to fix a typographical error in clause 3.2.2.5 when referencing a specific regulation provision. Further minor, non-substantive changes throughout the document include basic word preference changes, grammatical changes, and the necessary renumbering of sections to incorporate the addition of a clause.

The updates to the MOA also include several other changes, including the modification of two definitions, the addition of one clause, and the modification of one section. First, the

MOA updates modify the definition of “Statewide Transportation Improvement Program (STIP).”<sup>9,10</sup> The updated definition of STIP is identical to the definition in 23 CFR part 450. The definition of “Transportation Improvement Program (TIP)” has also been modified in the MOA.<sup>11,12</sup> This definition is similar to the one for TIP found in 23 CFR part 450. As explained in the previous section, since transportation plans are developed pursuant to the requirements outlined in 23 CFR part 450, EPA finds these changes acceptable. The updates also include adding clause 4.1.2 to the “Conformity Analysis Results and Reporting” Section, which states that the conformity analysis should include, “Mobile model inputs and outputs needed to develop road network emissions modeling results...” As all the parties involved are required to evaluate and choose models and the associated assumptions for these models pursuant to 40 CFR 93.105(c)(1)(i), EPA preliminarily finds the addition of this clause requiring the conformity analysis report to include the mobile model inputs and outputs acceptable and helpful. Finally, the “Modifications and Renewal of Agreement” section has been heavily modified in the MOA. The modifications to this section of the Greater Smoky Mountain Area MOA are identical to the changes made in the “Modifications of Agreement” section for the bi-state Charlotte MPOs. EPA finds these changes acceptable for the same reasons described in Section II.A.

EPA has reviewed the procedures and updates provided in the MOA and has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and CFR part 93. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Great Smoky Mountain Area into the North Carolina SIP.

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<sup>9</sup> The previous definition in the MOA defined STIP as, “...a staged, multi-year, statewide, intermodal program of transportation projects, which consistent with the statewide transportation plan and planning processes.”

<sup>10</sup> The MOA has updated the definition of STIP to, “...a statewide, prioritized listing/program of transportation projects that is consistent with the long-range statewide transportation plan, TIPs, and required for projects to be eligible for funding pursuant to Title 23 U.S.C. and Title 49 U.S.C. chapter 53.”

<sup>11</sup> The previous definition in the MOA defined TIP as a “Transportation Improvement Program developed by FHWA-EFLHD in coordination with NPS.”

<sup>12</sup> The MOA has updated the definition of TIP to, “...a prioritized listing/program of transportation projects that are developed by FHWA-EFLHD in coordination with the NPS and required for projects to be eligible for funding pursuant to Title 23 U.S.C. and 49 U.S.C. chapter 53.”

### ***C. Greensboro-Winston Salem-High Point Area***

There are four MPOs within the Greensboro-Winston Salem-High Point Area. These MPOs are:

- Burlington-Graham Metropolitan Planning Organization (BGMPO);
- Greensboro Urban Area Metropolitan Planning Organization (GMPO);
- High Point Urban Area Metropolitan Planning Organization (HPMPO); and
- Winston-Salem-Forsyth Urban Area Metropolitan Planning Organization (WSFUA).

Several counties (or portions of counties) in the Greensboro-Winston Salem-High Point Area comprise the maintenance area for the CO NAAQS, the previous maintenance area for the 1997 PM<sub>2.5</sub> NAAQS, and the 1997 8-hour ozone NAAQS.<sup>13</sup> The Burlington-Graham MPO is comprised of Alamance County and portions of Guilford and Orange Counties for the 1997 8-hour ozone NAAQS and the 1997 annual PM<sub>2.5</sub> NAAQS maintenance areas. The Greensboro Urban MPO is comprised of the City of Greensboro, the majority of unincorporated Guilford County, and the towns of Oak Ridge, Pleasant Garden, Sedalia, Stokesdale, and Summerfield for the annual 1997 PM<sub>2.5</sub> NAAQS maintenance areas. The High Point Urban MPO is comprised of Archdale, Denton, High Point, Jamestown, Lexington, Thomasville, Trinity, and Wallburg Counties, as well as portions of Davidson, Forsyth and Randolph Counties for the CO and 1997 PM<sub>2.5</sub> NAAQS maintenance areas. Lastly, the Winston-Salem Urban MPO is comprised of portions of Forsyth, Davidson, Davie and Stokes Counties for the CO NAAQS and 1997 PM<sub>2.5</sub> NAAQS maintenance areas. Although no longer required, DAQ worked with the BGMPO, GMPO, HPMPO, WSFUA, NC DOT, and the other applicable transportation and air quality partners for the Area to develop and execute updated MOAs to address the consultation and

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<sup>13</sup> The Greensboro-Winston Salem-High Point Area was an Early Action Compact (EAC) area for the 1997 8-hour ozone NAAQS. This area was designated nonattainment on June 15, 2004, for the 1997 8-hour ozone NAAQS, with a deferred effective date. The Area met all of the EAC milestones and was ultimately never effectively designated nonattainment for the 1997 8-hour ozone NAAQS. The area was therefore never required to implement transportation conformity requirements for the 1997 8-hour ozone NAAQS, but was required to continue to implement transportation conformity requirements for the 1-hour ozone NAAQS until this requirement was removed as a result of the area successfully meeting the EAC milestones for the 1997 8-hour ozone NAAQS.



other applicable transportation conformity requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c) for the Area.<sup>14</sup> These MOAs are provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions for the MOAs associated with the Greensboro-Winston Salem-High Point Area, make the same changes to these MOAs as the bi-state Charlotte MOAs. As such, North Carolina's September 24, 2021, SIP revisions update the MOA definitions, party duties section, conformity analysis results and reporting section, and the "Modifications of Agreement" section. Since the updates to the MOAs in the Greensboro-Winston Salem-High Point Area are the same as those to the MOAs for the bi-state Charlotte Area, EPA has preliminarily determined that these modifications are consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOAs for the BGMPO, GMPO, HPMPO, and WSFUA, relating to the Greensboro-Winston Salem-High Point Area, into the North Carolina SIP.

#### ***D. Hickory Area***

The Hickory Area consists of one MPO, the Greater Hickory MPO, which is comprised of Alexander, Burke, Caldwell, and Catawba Counties. The Hickory Area is a maintenance area for the 1997 PM<sub>2.5</sub> NAAQS. As indicated above, the Hickory Area was previously required to implement transportation conformity requirements for the 1997 PM<sub>2.5</sub> NAAQS as a maintenance area. Although no longer required, DAQ worked with the Greater Hickory MPO, and other applicable transportation and air quality partners for the Hickory Area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c) for the Area. This MOA is provided in the docket for this proposed rulemaking.

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<sup>14</sup> Transportation conformity requirements are no longer applicable to the Davidson and Guilford Counties 1997 PM<sub>2.5</sub> NAAQS maintenance areas.

North Carolina's September 24, 2021, SIP revisions make the same changes to the Greater Hickory MOA as those made to the MOAs for the bi-State Charlotte Area. As such, these changes update the MOA definitions, party duties section, conformity analysis results and reporting section, and the Modifications of Agreement section. Since the updates to the Greater Hickory MOA are the same as those made to the MOAs for the bi-State Charlotte Area, EPA has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Greater Hickory MPO, relating to the Hickory Area, into the North Carolina SIP.

***E. Raleigh-Durham-Chapel Hill Area***

There are two MPOs within the Raleigh, Durham, Chapel Hill Area. These MPOs are:

- Durham-Chapel Hill-Carrboro MPO; and
- North Carolina Capital Area MPO.

Several counties (or portions of counties) in the Raleigh-Durham-Chapel Hill Area comprise a maintenance area for the CO NAAQS and a maintenance area for the 1997 8-hour ozone NAAQS. The Durham-Chapel Hill-Carrboro MPO consists of Durham County; the portion of Orange County that contains the towns of Chapel Hill, Carrboro, and Hillsborough; and Northeast Chatham County. The North Carolina Capital Area MPO consists of Franklin, Granville, Harnett, Johnston, and Wake Counties. Durham, Franklin, Granville, Orange, Johnston, Person,<sup>15</sup> and Wake Counties, in their entireties, and a portion of Chatham County in the Raleigh-Durham-Chapel Hill Area were included in the maintenance area for the 1997 8-hour ozone NAAQS, and thus, are required to implement transportation conformity requirements.<sup>16</sup>

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<sup>15</sup> NC DOT administers transportation conformity requirements for Person County in accordance with the MOA for rural areas. See Section II.G, below.

<sup>16</sup> The end of the second maintenance plan has been reached for CO for Durham and Wake Counties, so transportation conformity is no longer required in relation to the CO NAAQS for the Raleigh-Durham-Chapel Hill Area.

DAQ worked with the Durham-Chapel Hill-Carrboro MPO, the North Carolina Capital Area MPO, NC DOT, and the other applicable transportation and air quality partners for the Area to develop and execute updated MOAs to address the consultation and other applicable transportation conformity SIP requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c) for the Area. These MOAs are provided in the docket for this proposed rulemaking.

North Carolina's September 24, 2021, SIP revisions make the same changes to the Raleigh-Durham-Chapel Hill Area MOAs as the bi-State Charlotte MOAs. As such, North Carolina's September 24, 2021, SIP revisions update the MOA definitions, party duties section, conformity analysis results and reporting section, and the Modifications of Agreement section. Since the updates to the MOAs in the Raleigh-Durham-Chapel Hill Area are the same as those to the MOAs in the bi-State Charlotte Area, EPA has preliminarily determined that these are consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOAs for the Durham-Chapel Hill-Cabarrus MPO and North Carolina Capital Area MPO, relating to the Raleigh-Durham-Chapel Hill Area, into the North Carolina SIP.

***F. Rocky Mount Area***

There is one MPO in the Rocky Mount Area, the Rocky Mount Urban Area MPO, which is comprised of the City of Rocky Mount, the towns of Nashville and Sharpsburg, and portions of Edgecombe and Nash Counties. Edgecombe and Nash Counties are in maintenance for the 1997 8-hour ozone NAAQS. DAQ worked with the Rocky Mount Urban Area MPO and other applicable transportation and air quality partners for the Rocky Mount Area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity SIP requirements for the Area. This MOA is provided in the docket for this proposed rulemaking.

North Carolina’s September 24, 2021, SIP revisions make the same changes to the Rocky Mount Area MOA as those made to the MOAs for the bi-state Charlotte Area with the exception of the definition for TIP.<sup>17</sup> As such, these changes update the MOA definitions, party duties section, conformity analysis results and reporting section, and the Modifications of Agreement section. Since the updates to the Rocky Mount MOA are the same as those to the MOAs in the bi-state Charlotte Area,<sup>18</sup> EPA has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93 for the reasons described in Section II.A. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Rocky Mount Area into the North Carolina SIP.

***G. Rural Area***

NC DOT is the responsible party for interagency consultation and compliance with transportation conformity requirements if no MPO exists in an area that is subject to 40 CFR Part 93. Currently, Person County is subject to transportation conformity per the 1997 8-hour ozone NAAQS and does not have an MPO responsible for it. Therefore, NC DOT administers transportation conformity requirements for this area in accordance with the MOA for rural areas. DAQ worked with NC DOT and other applicable transportation and air quality partners for the area to develop and execute an updated MOA to address the consultation and other applicable transportation conformity SIP requirements such as 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c). This MOA is provided in the docket for this proposed rulemaking.

North Carolina’s September 24, 2021, SIP revisions for the Rural Area MOA make many of the same changes as the bi-State Charlotte MOAs and the Great Smoky Mountain Area MOA. With respect to “Duties of the Parties” section, the Interagency Consultation Conformity Determination Meeting

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<sup>17</sup> The Rocky Mount Area MOA uses a slightly different definition for TIP than the bi-state Charlotte Area MOAs. It defines it as, “...a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the MTP and was developed pursuant to 23 CFR, Part 450.” Outside of this difference, the rest of the revisions are the same as the MOAs for the MPOs in the bi-State Charlotte Area. As transportation conformity requires that federally-supported transportation activities, such as TIPs, are consistent with the purposes of the SIP pursuant to 23 CFR, Part 450, this definition is acceptable.

<sup>18</sup> See *id.*

timing clarification, a typographical error in clause 6.3.1.5, the removal of the “Termination of Agreement” section, and the Modifications of Agreement section, the Rural Area MOA makes the same changes as those made in the bi-state Charlotte MOAs. With respect to the definitions for “Transportation Improvement Program (TIP)” and “Statewide Transportation Improvement Program (STIP)”, the Rural Area MOA makes the same changes as the Great Smoky Mountain National Park Area MOA. EPA finds these changes acceptable of the same reasons outlined in Sections II.A and II.B. Further minor, non-substantive changes throughout the document include basic word preference changes, grammatical changes, and the necessary renumbering of sections to incorporate the addition of a clause.

EPA has reviewed the procedures and updates provided in the MOA and has preliminarily determined that it is consistent with the CAA and the applicable transportation conformity requirements at 40 CFR 51.390 and 40 CFR part 93. Therefore, EPA is proposing to approve the inclusion of the updated MOA for the Rural Area into the North Carolina SIP.

### **III. Proposed Actions**

For the reasons discussed above, EPA is proposing to approve North Carolina’s September 24, 2021, SIP revisions. Specifically, EPA is proposing to approve the replacement of Transportation Conformity MOAs for the Burlington-Graham MPO, Cabarrus-Rowan MPO, Charlotte Regional Transportation Planning Organization, Durham-Chapel Hill-Carrboro MPO, Gaston-Cleveland-Lincoln MPO, Greater Hickory MPO, Greensboro Urban Area MPO, High Point Urban Area MPO, North Carolina Capital Area MPO, Rocky Mount Urban Area MPO, the Great Smoky Mountains National Park (NPS), and Rural Area (NC DOT). EPA is proposing to find that these actions are consistent with section 110 and 176 of the CAA and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP revisions are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 31, 2023.

**Daniel Blackman,**

*Regional Administrator,  
Region 4.*

[FR Doc. 2023-02488 Filed: 2/6/2023 8:45 am; Publication Date: 2/7/2023]